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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,251	09/15/2003	Fung-jou Chen	KCC-14,105.4	2418

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EXAMINER

HILL, LAURA C

ART UNIT PAPER NUMBER

3761

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,251

Applicant(s)

CHEN ET AL

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 29-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 29-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/15/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 18-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9 January 2006.

Information Disclosure Statement

2. The information disclosure statement filed 15 September 2003 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. [See also MPEP 609 for IDS content.] The information disclosure statement also fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein (specifically all of the Non-Patent literature and the FR 1,358,269 and FR 1,554,951 on page 17 of the IDS) has not been considered. However, it is noted that the Examiner has considered all other Foreign Patent documents with the aforementioned exceptions above although a copy of the references has not been provided. It is also noted that an undue burden has been placed upon the examiner by the applicant in the listing of over 250 US Patent documents in the IDS, many of which were irrelevant to the claimed subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 4-5, 8-12, 14-15, 29-30, 32-33, and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Sherrod et al. (US 4,973,325; herein 'Sherrod'). Regarding claims 1 and 29-30 Sherrod discloses a feminine pad 10, 28 comprising an absorbent core 14 sandwiched between a fluid permeable cover 20, 44 and a fluid impermeable baffle 22, 42 (column 3, lines 49-53), the absorbent core having central absorbent member 32 disposed over and extending into a void [void is considered to be any of the open areas around transfer member 54] of an outer absorbent member 30 (column 4, line 41 and figure 6); and a transfer member/wicking barrier 54 disposed between outer absorbent member 30 and central absorbent member 32, said wicking barrier comprising a vertical component that spans a vertical distance between the outer and central absorbent members and a horizontal component that spans a horizontal distance on the bodyside of the absorbent core, the wicking barrier facilitates movement of body fluid from fluid permeable cover 44 downward and outward to distant areas of central and outer absorbent members 30, 32 (column 4, lines 38-41 and figure 6).

Regarding claim 2 Sherrod discloses transfer member/wicking barrier 54 can be constructed from any material which will readily transfer fluid as well as having the

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ability to give the fluid up to a cellulose absorbent or to an absorbent containing a superabsorbent (column 4, lines 41-45).

Regarding claims 4 and 32 Sherrod discloses wicking barrier 54 can be a bonded carded web such as a composite of materials made by one of many known air-forming processes such as spun bond, which is a known air-forming process (column 4, lines 58-61).

Regarding claims 5, 8, 12, 33, and 36 Sherrod discloses wicking barrier 54 creates a body fluid stain 74 which is distributed along the longitudinal axis of the article and is distributed laterally to a greater portion of the distant/outer garment-facing of absorbent members 30, 32 (column 6, lines 10-15, figure 6).

Regarding claims 9, 11, 14, 37, and 39 Sherrod discloses wicking barrier 54 comprises multiple vertical layers of nonabsorbent barrier material denoted by first leg 58 and second leg 62 alternating with absorbent material 30, 32 (column 5, lines 26-28 and figure 6).

Regarding claims 10 and 38 Sherrod discloses a fold formed in the top sheet 44 (end points on surface of top sheet that fold over shaping member 42 in figure 6).

Regarding claim 15 Sherrod discloses the article as discussed above with respect to claim 1 and further discloses peel strip/shaping layer 80 (column 6, lines 18-25 and figure 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 3, 6-7, 16-17, 31, and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherrod et al. (US 4,973,325; herein 'Sherrod'). Regarding claims 3, 6, 31 and 34 Sherrod does not expressly disclose wicking barrier is formed from an apertured film. One would be motivated to modify the wicking barrier with an apertured film for enhanced vertical fluid wicking since it is well known that the addition of apertures increases said fluid wicking. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the wicking barrier and thus providing a wicking barrier formed of an apertured film.

Regarding claims 16-17 and 35 Sherrod inherently outer shaping member thickness, edge width, basis weight or wicking barrier horizontal spanning distance values since the discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer.

Atlas Powder Co. v. Ireco Inc., 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir.

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1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not expressly disclose not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977). Alternatively the aforementioned values are result-effective variables since they are a result of the materials used and the size of the article. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sherrod with the aforementioned values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sherrod et al. (US 4,973,325; herein 'Sherrod') in view of Oatley et al. (US 5,104,396; herein 'Oatley'). Sherrod *does not expressly disclose* the absorbent member comprises at least one layer of absorbent material and at least one layer of barrier material wound together in a spiral wound composite. Oatley discloses an absorbent pad with a first wicking means in the fibrous layer adapted to conduct fluid outwardly from the central portion towards the periphery of the fibrous layer and a second wicking means in fluid conductivity with the first wicking means and adapted to conduct fluid from the first wicking means in a direction way from the first wicking means (column 1, lines 60-68). Oatley further discloses the helical path/spiral wound composite 38 is formed by absorbent fibrous layer 34 and impermeable backing sheet 32 (column 6, lines 27-45, figure 5). One would be motivated to modify the article of Sherrod with the spiral wound composite of Oatley for improved fluid distribution since both references disclose

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wearable absorbent articles for lateral fluid wicking to outer peripheries of the absorbent members. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the article, thus providing a spiral wound composite.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Runeman et al. (US 5,342,337) is cited for showing an absorbent diaper with central absorbent 5 disposed over void, outer absorbent 4, shaping layer 6, wicking barriers 7, liquid permeable top sheet 1 and liquid impermeable backing 2, said central absorbent 5 enables liquid excreted to be carried away from wetting locations very quickly thereby enabling large parts of the pad material to be utilized rapidly. Schmidt (US 5,855,572) and McFall et al. (US 5,591,148) are cited for showing an absorbent core with fluid storage components laterally spaced apart with a gap and a void space underneath the overlying acquisition/distribution components to handle gushes during use.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

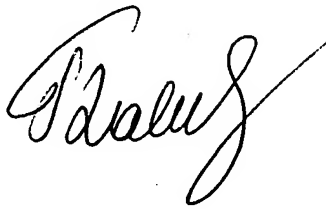
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER